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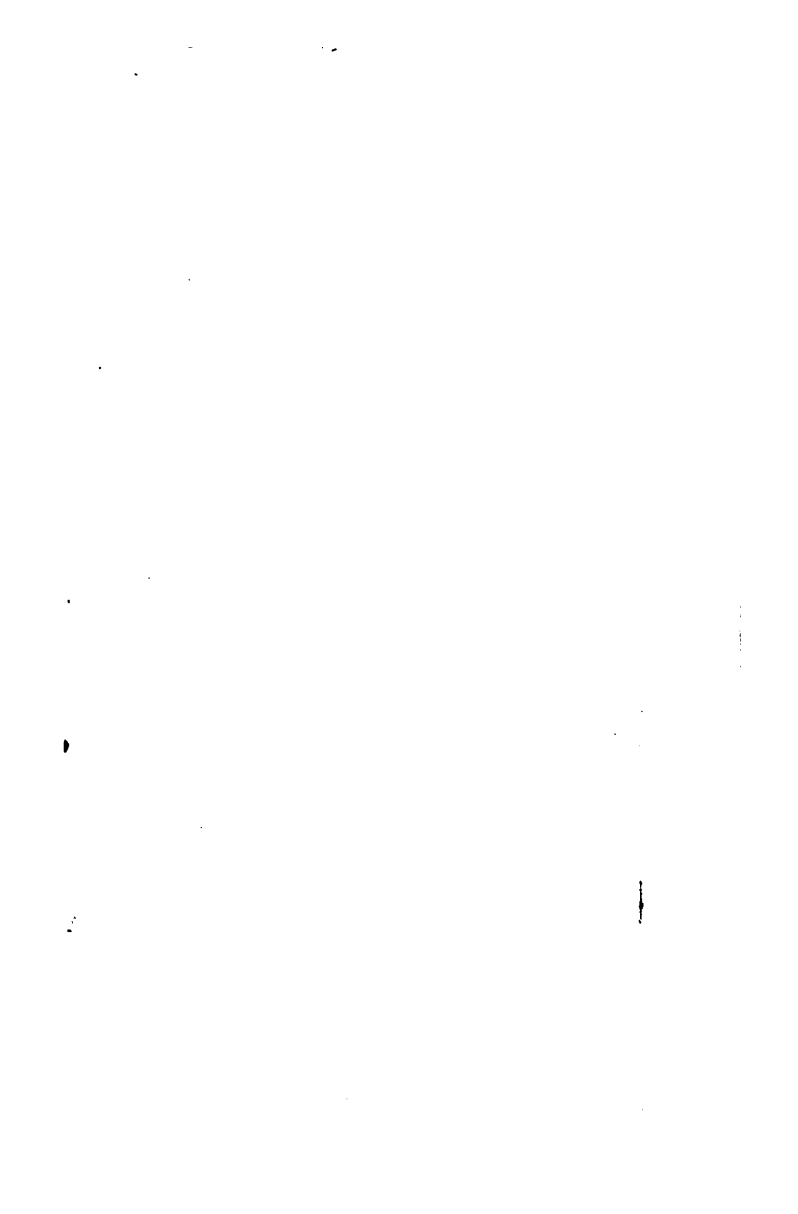
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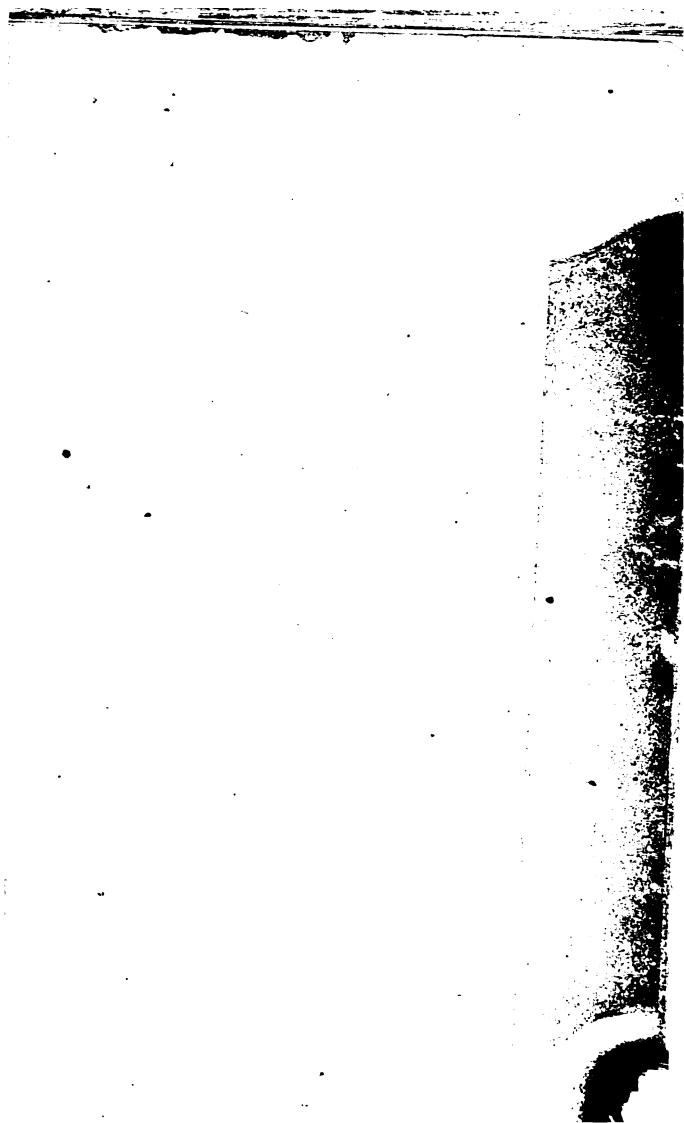
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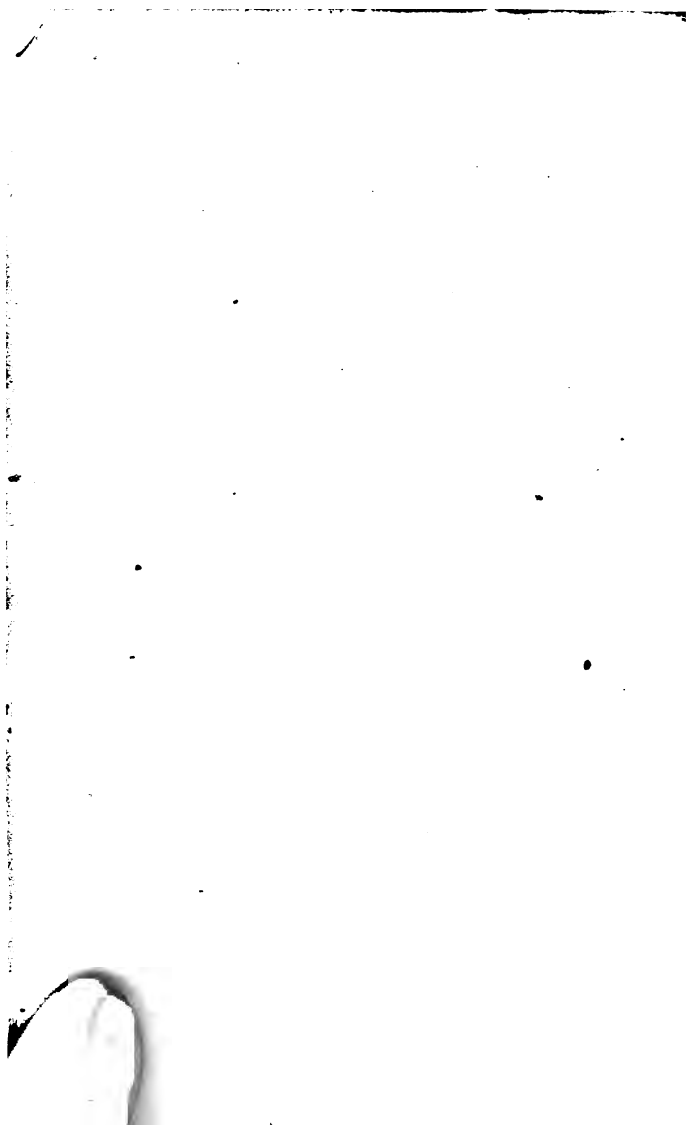


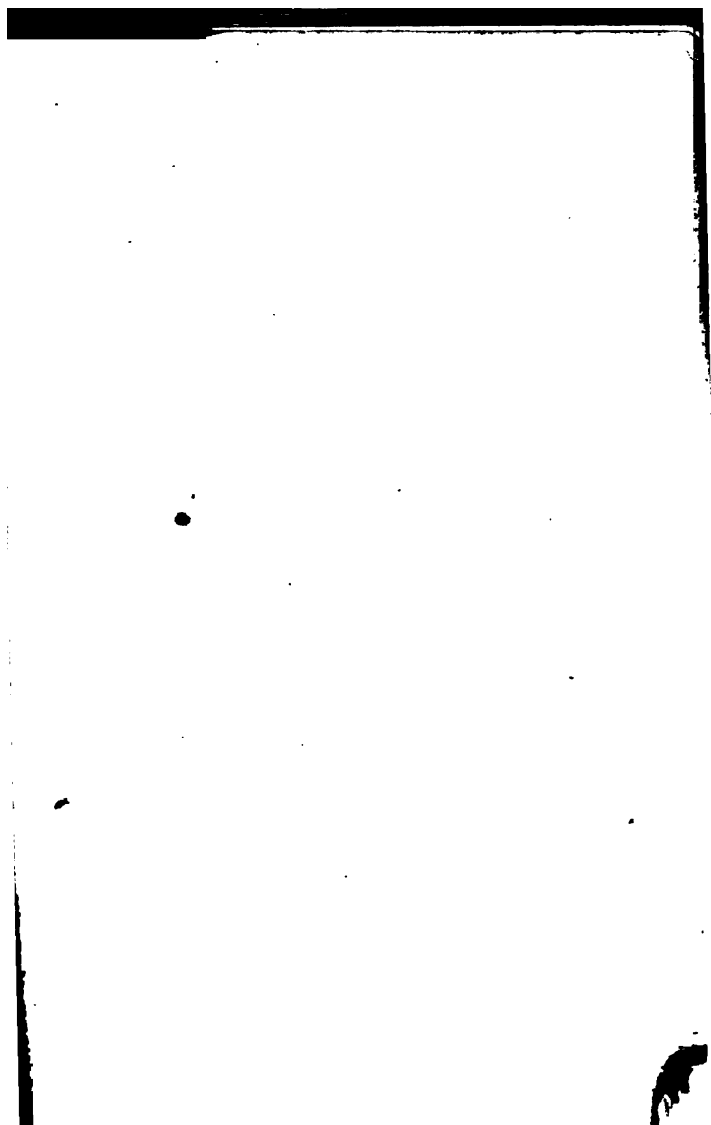
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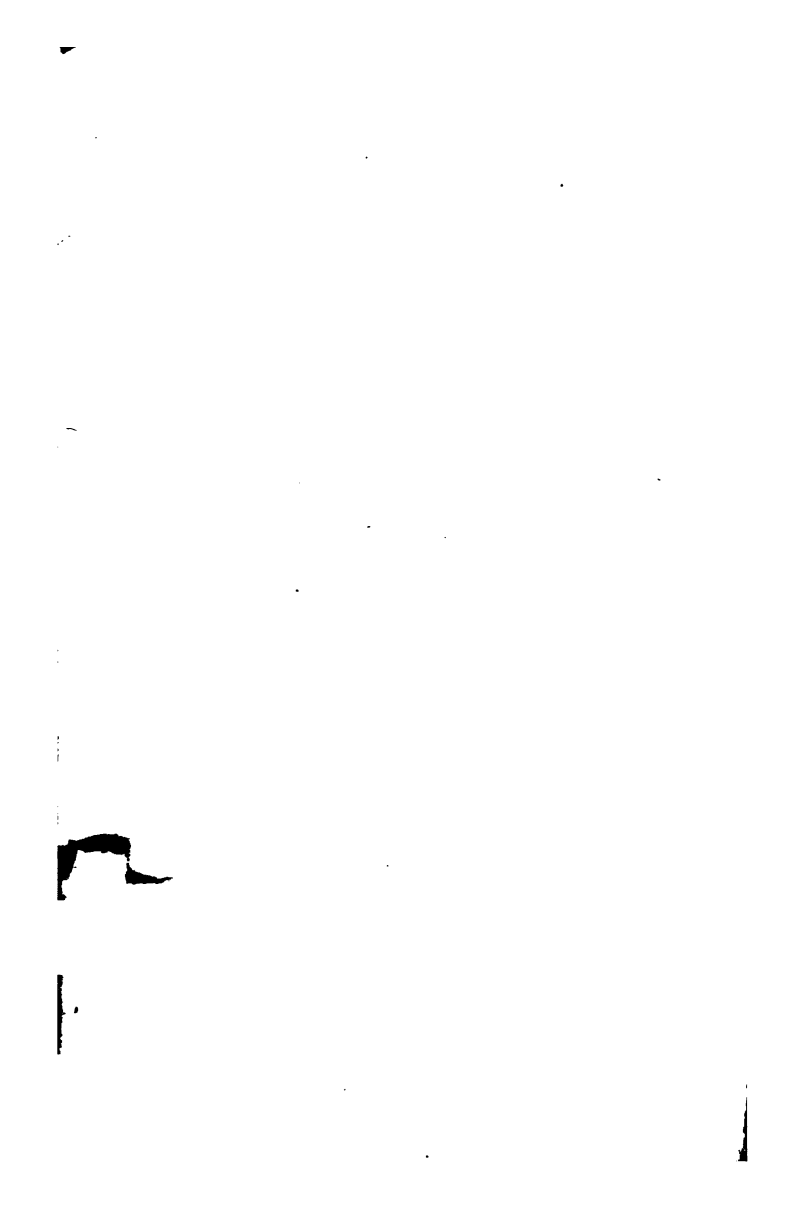








THE CIVIL CODE.



As amended to 1888

THE
CIVIL CODE

OF THE
STATE OF CALIFORNIA,

AS ENACTED IN 1872, AMENDED AT SUBSEQUENT SESSIONS, AND ADAPTED TO THE CONSTITUTION OF 1879, WITH REFERENCES TO THE DECISIONS IN WHICH THE CODE WAS CITED, AND AN APPENDIX OF GENERAL LAWS UPON THE SUBJECTS EMBRACED IN THE CODE.

COMPILED BY
ALBERT HART.

SAN FRANCISCO:
BANCROFT-WHITNEY COMPANY.

1888.

L22800

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BY ALBERT HART

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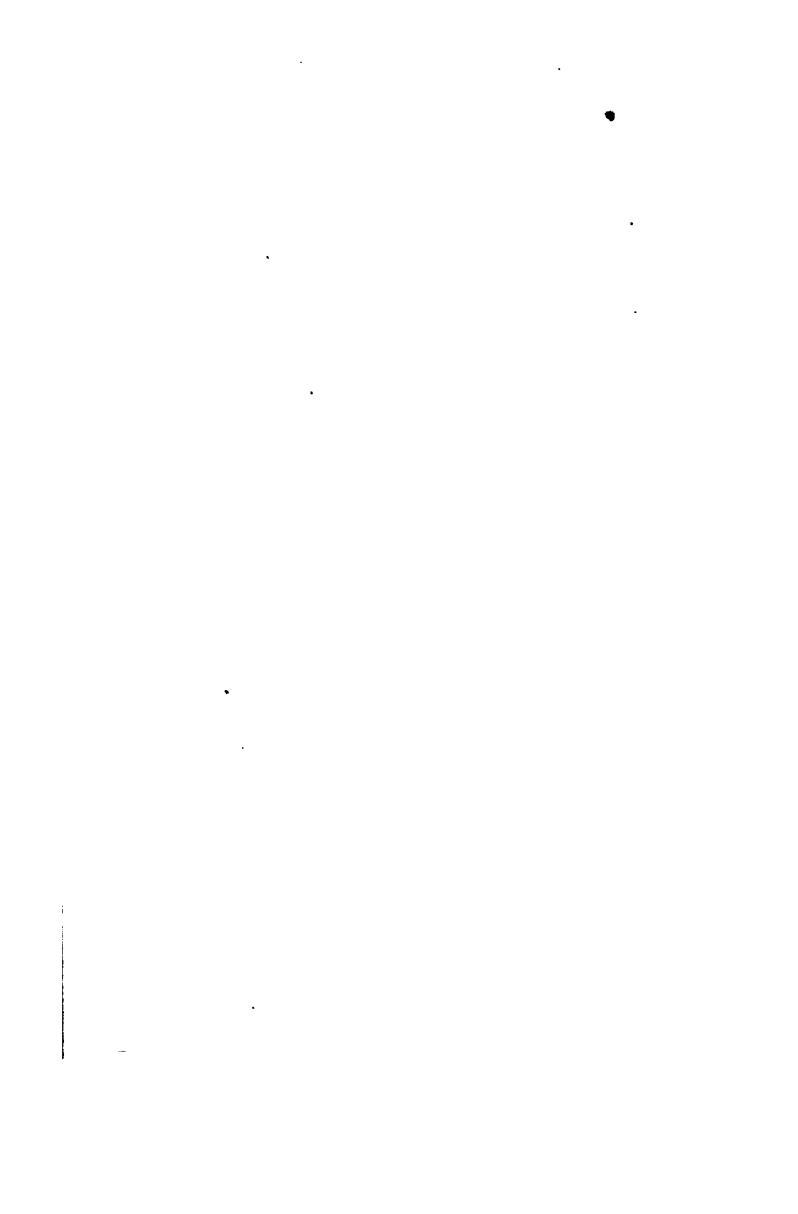
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THE CIVIL CODE

OF THE

STATE OF CALIFORNIA.

IN FOUR DIVISIONS.

THE CIVIL CODE

OF THE STATE OF CALIFORNIA.

AN ACT TO ESTABLISH A CIVIL CODE. [APPROVED, March 21st, 1872.]

The People of the State of California, represented in Senate and Assembly, do enact as follows :

TITLE OF THE ACT.

§ 1. THIS Act shall be known as THE CIVIL CODE OF THE STATE OF CALIFORNIA, and is in Four Divisions, as follows :—

- I. The First relating to Persons.
- II. The Second to Property.
- III. The Third to Obligations.
- IV. The Fourth contains General Provisions relating to the three Preceding Divisions.

PRELIMINARY PROVISIONS.

- SECTION 2.** When this Code takes effect.
2. Not retroactive.
 3. Rules of construction.
 5. Provisions similar to existing laws, how construed.
 6. Actions, &c., not affected.
 7. Holidays.
 8. Same.
 9. Business days.
 10. Computation of time.
 11. Certain acts not to be done on holidays.
 12. Joint authority construed.

SECTION 13. Words and phrases, how construed.

14. Certain terms defined.

15. Good faith, what constitutes. (Repealed.)

16. Degrees of care and diligence. (Repealed.)

17. Degrees of negligence. (Repealed.)

18. Notice, actual and constructive.

19. Constructive notice, when deemed.

20. Effect of repeal.

21. This Act, how cited.

§ 2. This Code takes effect at twelve o'clock noon on the first day of January, eighteen hundred and seventy-three.

§ 3. No part of it is retroactive, unless expressly so declared

§ 4. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this Code. The Code establishes the law of this State respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

§ 5. The provisions of this Code, so far as they are substantially the same as existing statutes or the common law, must be construed as continuations thereof, and not as new enactments.

§ 6. No action or proceeding commenced before this Code takes effect, and no right accrued, is affected by its provisions.

§ 7. Holidays, within the meaning of this Code, are: every Sunday, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the State, and every day appointed by the President of the United States or by the Governor of this State for a public fast, thanksgiving, or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday. [In effect April 9, 1880.]

§ 8. If the first of January, the twenty-second of February, the fourth of July, or the twenty-fifth of December falls upon a Sunday, the Monday following is a holiday.

§ 9. All other days than those mentioned in the last two sections are to be deemed business days for all purposes.

§ 10. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

§ 11. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

§ 12. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

§ 13. Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

§ 14. Words used in this Code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes property real and personal;

2. The words "real property" are coextensive with lands, tenements, and hereditaments;

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

4. The word "month" means a calendar month, unless otherwise expressed; and,

5. The word "will" includes codicils. [In effect July 1, 1876.]

54 Cal. 109; 58 Cal. 857.

§§ 15, 16, 17 of said Code are repealed. [In effect July 1, 1874.]

§ 18. Notice is:

1. Actual — which consists in express information of a fact or,

2. Constructive — which is imputed by law.

§ 19. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact. [In effect July, 1874.]

54 Cal. 23, 352, 552; 55 Cal. 117, 161, 529; 57 Cal. 323, 399.

§ 20. No statute, law, or rule is continued in force because it is consistent with the provisions of this Code on the same subject; but in all cases provided for by this Code, all statutes, laws, and rules heretofore in force in this State, whether consistent or not with the provisions of this Code, unless expressly continued in force by it, are repealed or abrogated.

This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this Code provided.

§ 21. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as "THE CIVIL CODE," adding, when necessary, the number of the section.

DIVISION FIRST.

PART I. PERSONS, §§ 25-42.

II. PERSONAL RIGHTS, §§ 43-50.

III. PERSONAL RELATIONS, §§ 55-276.

IV. CORPORATIONS, §§ 283-648.

PART I.

PERSONS.

- Section 25.** Minors, who are.
26 Periods of minority, how calculated
27. Adults, who are.
28. Status of minors, how changed. (Repealed.)
29. Unborn child.
30. Persons made adults by other States, considered as such in this State, when domiciled herein. (Repealed.)
31. Minors by the laws of other State or country, how considered in this State. (Repealed.)
32. Custody of minors.
33. Minors cannot give a delegation of power.
34. Contracts of minors made; disaffirmed.
35. When minor may disaffirm.
36. Cannot disaffirm contract for necessities.
37. Nor certain obligations.
38. Contracts of persons without understanding.
39. Contracts of other insane persons.
40. Powers of persons whose incapacity has been adjudged.
41. Minors liable for wrongs, but not liable for exemplary damages.
42. Minors may enforce their rights.

§ 25. MINORS are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

§ 26. The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

§ 27. All other persons are adults.

§ 28 of said Code is repealed. [In effect July 1, 1874.]

§ 29. A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

31 of said Code are repealed. [In effect July 1,

§ 32. The custody of minors and persons of unsound mind is regulated by Part III. of this division.

§ 33. A minor cannot give a delegation of power, nor under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control. [In effect July 1, 1874.]

§ 34. A minor may make any other contract than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this title, and subject to the provisions of the Titles on Marriage, and on Master and Servant. [In effect July 1, 1874.]

§ 35. In all cases other than those specified in sections thirty-six and thirty-seven, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent. [In effect July 1, 1874.]

§ 36. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them. [In effect July 1, 1874.]

§ 37. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

§ 38. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family. [In effect July 1, 1874]

§ 39. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the Chapter on Rescission of this Code. [In effect July 1, 1874.]

§ 40. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right, until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge. [In effect May 29, 1878.]

57 Cal. 531.

§ 41. A minor, or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

§ 42. A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

PART II.

PERSONAL RIGHTS.

- SECTION 43.** General personal rights.
- 44. Defamation, what.
 - 45. Libel, what.
 - 46. Slander, what.
 - 47. What communications are privileged.
 - 48. Malice not inferred.
 - 49. Protection to personal relations.
 - 50. Right to use force.

§ 43. BESIDES the personal rights mentioned or recognized in the POLITICAL CODE, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

See Pol. Code, §§ 37, 50-60; Penal Code, §§ 346-349

§ 44. Defamation is effected by :

1. Libel;
2. Slander.

§ 45. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

§ 46. Slander is a false and unprivileged publication other than libel, which :

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime ;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease ;
3. Tends directly to injure him in respect to his office, pro

fession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit ;

4. Imputes to him impotence or a want of chastity ; or,

5. Which, by natural consequence, causes actual damage.

§ 47. A privileged publication is one made :

1. In the proper discharge of an official duty ;

2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law ;

3. In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information ;

4. By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof. [In effect July 1, 1874.]

§ 48. In the cases provided for in Subdivisions 3 and 4 of the preceding section, malice is not inferred from the communication or publication.

§ 49. The rights of personal relation forbid :

1. The abduction of a husband from his wife, or of a parent from his child ;

2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master ;

3. The seduction of a wife, daughter, orphan sister, or servant ;

4. Any injury to a servant which affects his ability to serve his master.

§ 50. Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

[In effect July 1, 1874.]

Lawful resistance to the commission of offences. See Penal Code §§ 692-694.

PART III

PERSONAL RELATIONS.

- TITLE I. MARRIAGE, §§ 55-181.**
- II. PARENT AND CHILD, §§ 193-230.
- III. GUARDIAN AND WARD, §§ 236-258.
- IV. MASTER AND SERVANT, §§ 264-276.

TITLE I. MARRIAGE.

- CHAPTER I. THE CONTRACT OF MARRIAGE, §§ 55-80.**
 - II. DIVORCE, §§ 82-148.
 - III. HUSBAND AND WIFE, §§ 155-181.
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CHAPTER I. THE CONTRACT OF MARRIAGE.

- ARTICLE I. VALIDITY OF MARRIAGE, §§ 55-63.**
- II. AUTHENTICATION OF MARRIAGE, §§ 68-78.
- III. JUDICIAL DETERMINATION OF VOID MARRIAGES, § 80

ARTICLE I. VALIDITY OF MARRIAGE.

- SECTION 55.** What constitutes marriage.
- 56. Minors capable of contracting marriage.
- 57. Marriage, how manifested and proved.
- 58. Certain marriages voidable.
- 59. Incompetency of parties to.
- 60. Of whites and negroes or mulattoes, void.
- 61. Polygamy forbidden.
- 62. Released from marriage contract, when.
- 63. Marriages contracted without the State.

§ 55. MARRIAGE is a personal relation arising out of a civil contract, to which the consent of parties capable of making

it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations.

Bigamy is defined in Penal Code, § 281, and punished by §§ 283-4.

§ 56. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

§ 57. Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

§ 58. If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable. [In effect July 1, 1874.]

Penalty for false personation in marital relations. Penal Code, § 528.

§ 59. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

Penalty for incestuous marriages. Penal Code, §§ 285, 859.

§ 60. All marriages of white persons with negroes or mulattoes are illegal and void.

§ 61. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved;
2. Unless such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is

valid until its nullity is adjudged by a competent tribunal
[In effect July 1, 1874.]

Penalty for bigamy. Penal Code, §§ 233-34; exceptions, § 232.
53 Cal. 219.

§ 62. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.
[In effect July 1, 1874.]

§ 63. All marriages contracted without this State, which would be valid by the laws of the country in which the same were contracted, are valid in this State.

ARTICLE II.

AUTHENTICATION OF MARRIAGE.

SECTION 68. Marriage, how solemnized.

69. Marriage license.

70. By whom solemnized.

71. No particular form of solemnization.

72. Substantial requisites.

73. Certificate of marriage.

74. Certificate to parties and recorder.

75. Declaration of marriage, how made

76. Declaration to contain what.

77. To be acknowledged and recorded.

78. Action between the parties to determine validity.

79. Persons who may be married without license.

§ 68. Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but non-compliance with its provisions does not invalidate any lawful marriage.

§ 69. All persons about to be joined in marriage must first obtain a license therefor from the county clerk of the county in which the marriage is to be celebrated, showing:

1. The identity of the parties;

2. Their real and full names and places of residence;

3. Their ages.

4. If the male be under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother, or guardian, or of one having the charge of such person, if any such be given; or that such non-aged person has been previously, but is not at the time, married. For the purpose of ascertaining these facts, the clerk is authorized to

examine parties and witnesses on oath, and to receive affidavits, and he must state such facts in the license. If the male be under the age of twenty-one years, or the female be under the age of eighteen, and such person has not been previously married, no license shall be issued by the clerk, unless the consent in writing of the parents of the person under age, or of one of such parents, or of his or her guardian, or of one having charge of such person, be presented to him; and such consent shall be filed by the clerk, provided that the said clerk shall not issue a license authorizing the marriage of a white person with a negro, mulatto, or Mongolian. [In effect April 5, 1880.]

§ 70. Marriage may be solemnized by either a justice of the Supreme Court, judge of the Superior Court, justice of the peace, priest, or minister of the gospel of any denomination. [In effect April 5, 1880.]

Penalty for solemnization of illegal marriage. Penal Code, § 359.

§ 71. No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

§ 72. The person solemnizing a marriage must first require the presentation of the marriage license; and if he has any reason to doubt the correctness of its statement of facts, he must first satisfy himself of its correctness, and for that purpose he may administer oaths and examine the parties and witnesses in like manner as the county clerk does before issuing the license. [In effect July 1, 1874.]

§ 73. The person solemnizing a marriage must make, sign, and indorse upon, or attach to, the license, a certificate, showing:

1. The fact, time, and place of solemnization; and
2. The names and places of residence of one or more witnesses to the ceremony. [In effect July 1, 1874.]

Penalty for false return. Penal Code, § 360.

§ 74. He must, at the request of, and for either party, make a certified copy of the license and certificate, and file the originals with the county recorder within thirty days after the marriage.

Recorder must record. Polit. Code, § 4025

§ 75. Persons married without the solemnization provided for in section 70 must jointly make a declaration of marriage, substantially showing:

1. The names, ages, and residences of the parties;
2. The fact of marriage;
3. The time of marriage;
4. That the marriage has not been solemnized.

§ 76. If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages, and residences of the parties;
 2. The fact of marriage;
 3. That no record of such marriage is known to exist
- Such declaration must be subscribed by the parties and attested by at least three witnesses. [In effect July 1, 1874.]

See Penal Code, § 860.

§ 77. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property.

See Polit. Code, § 4235.

§ 78. If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the Superior Court, to have the validity of the marriage determined and declared. [In effect February 15, 1883.]

§ 79. When unmarried persons, not minors, have been living together as man and wife, they may, without a license, be married by any clergyman. A certificate of such marriage must, by the clergyman, be made and delivered to the parties, and recorded upon the records of the church of which the clergyman is a representative. No other record need be made. [In effect February 6, 1878.]

ARTICLE III.

JUDICIAL DETERMINATION OF VOID MARRIAGES.

§ 80. Either party to an incestuous or void marriage may proceed by action in the Superior Court, to have the same declared. [In effect April 5, 1880.]

CHAPTER II.

DIVORCE.

ARTICLE I. NULLITY, §§ 82-86.

II. DISSOLUTION, §§ 90-107.

III. CAUSES FOR DENYING DIVORCE, §§ 111-120.

IV. GENERAL PROVISIONS, §§ 126-148

ARTICLE I.

NULLITY.

Section 82 Cases where marriage may be annulled.

82. Action to obtain decree of nullity in certain cases, when and by whom commenced.

84. Children of annulled marriage

85. Custody of children.

86. Effect of judgment of nullity.

§ 82. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife;

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife;

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife;

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable. [In effect July 1 874.]

§ 83. An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows :

1. For causes mentioned in subdivision one : by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent ; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent ;

2. For causes mentioned in subdivision two : by either party during the life of the other, or by such former husband or wife ;

3. For causes mentioned in subdivision three : by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party ;

4. For causes mentioned in subdivision four : by the party injured, within four years after the discovery of the facts constituting the fraud ;

5. For causes mentioned in subdivision five : by the injured party, within four years after the marriage ;

6. For causes mentioned in subdivision six : by the injured party, within four years after the marriage. [In effect July 1, 1874.]

§ 84. Where a marriage is annulled on the ground that a former husband or wife was living, or on the ground of insanity, children begotten before the judgment are legitimate, and succeed to the estate of both parents.

§ 85. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

§ 86. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

SECTION 90. Marriage, how dissolved.

91. Divorce, what.

92. Causes for divorce.

SECTION 93. Adultery defined.

- 94. Extreme cruelty, what.
- 95. Desertion, what.
- 96. Desertion, how manifested.
- 97. In case of stratagem or fraud, who commits desertion.
- 98. In case of cruelty, where one party leaves the other, who commits desertion.
- 99. Separation by consent not desertion.
- 100. Separation and intent to desert not always coincident.
- 101. Consent to separate revocable.
- 102. Desertion, how cured. Effect of refusing condonation.
- 103. Wife must abide by husband's selection of home, or it is desertion on her part.
- 104. If the place is unfit, and wife refuses to conform, it is desertion by the husband.
- 105. Wilful neglect, what.
- 106. Habitual intemperance, what.
- 107. Habitual intemperance for one year.

§ 90. Marriage is dissolved only:

- 1. By the death of one of the parties; or,
- 2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties. [In effect July 1, 1874.]

§ 91. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons [In effect July 1, 1874.]

§ 92. Divorces may be granted for any of the following causes:

- 1. Adultery;
 - 2. Extreme cruelty;
 - 3. Wilful desertion;
 - 4. Wilful neglect;
 - 5. Habitual intemperance;
 - 6. Conviction of felony. [In effect July 1, 1874.]
- 51 Cal. 544.

§ 93. Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

Open and notorious adultery is punished by Act of May 15, 1872.

§ 94. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

§ 95. Wilful desertion is the voluntary separation of one of the married parties from the other with intent to desert.
51 Cal. 544.

§ 96. Persistent refusal to have reasonable matrimonial in-

tercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

§ 97. When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling-place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

§ 98. Departure or absence of one party from the family dwelling-place, caused by cruelty or threats of bodily harm, from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

§ 99. Separation by consent with or without the understanding that one of the parties will apply for a divorce, is not desertion.

§ 100. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation. [In effect July 1, 1874.]

§ 101. Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

§ 102. If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfil the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal. [In effect July 1, 1874.]

§ 103. The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

§ 104. If the place or mode of living selected by the hus

band is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

§ 105. Wilful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

51 Cal. 544.

§ 106. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

§ 107. Wilful desertion, wilful neglect, or habitual intemperance must continue for one year before either is a ground for divorce.

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

- SECTION** 111. Divorces denied, on showing what.
- 112. Connivance, what.
 - 113. Corrupt consent, how manifested.
 - 114. Collusion, what.
 - 115. Condonation, what.
 - 116. Requisites to condonation.
 - 117. Condonation implies what.
 - 118. Evidence of condonation.
 - 119. Condonation, when operates to bar divorce.
 - 120. Concealment of facts in certain cases makes condonation void.
 - 121. Condonation, how revoked.
 - 122. Recrimination, what.
 - 123. Condonation in a recriminatory defence a bar to such defence, when.
 - 124. Divorces denied, when.
 - 125. Lapse of time establishes certain presumptions.
 - 126. Presumptions may be rebutted.
 - 127. Limitation of time.
 - 128. Divorces granted, when.
 - 129. Proof of actual residence required. Presumptions do not apply.
 - 130. Divorce not to be granted by default, &c.

§ 111. Divorces must be denied upon showing

- 1. Connivance; or

2. Collusion ; or,
3. Condonation ; or,
4. Recrimination ; or,
5. Limitation and lapse of time.

§ 112. Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

§ 113. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

§ 114. Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

§ 115. Condonation is the conditional forgiveness of a matrimonial offence constituting a cause of divorce.

§ 116. The following requirements are necessary to condonation :

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce ;
2. Reconciliation and remission of the offence by the injured party ;
3. Restoration of the offending party to all marital rights.

§ 117. Condonation implies a condition subsequent ; that the forgiving party must be treated with conjugal kindness.

§ 118. Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from successive acts of ill-treatment which may, aggregately, constitute the offence, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. [In effect July 1, 1874.]

§ 119. In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. [In effect July 1, 1874.]

§ 120. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

§ 121. Condonation is revoked, and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

§ 122. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

§ 123. Condonation of a cause of divorce, shown in the answer as a recriminatory defence, is a bar to such defence, unless the condonation be revoked, as provided in section one hundred and twenty-one, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown [In effect July 1, 1874.]

§ 124. A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,
2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence;
3. In all other cases when there is an unreasonable lapse of time before the commencement of the action. [In effect July 1, 1874.]

§ 125. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offence, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of such offence.

§ 126. The presumptions arising from lapse of time may

be rebutted by showing reasonable grounds for the delay in commencing the action.

§ 127. There are no limitations of time for commencing actions for divorce, except such as are contained in section 124.

§ 128. A divorce must not be granted unless the plaintiff has been a resident of the State for six months next preceding the commencement of the action.

§ 129. In actions for divorce the presumption of law, that the domicile of the husband is the domicile of the wife, does not apply. After separation, each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

§ 130. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers. [In effect July 1, 1874.] 49 Cal. 94.

ARTICLE IV.

GENERAL PROVISIONS.

SECTION 136. Relief may be adjudged, where separation is denied.

137. Expense of action, alimony.

138. Orders respecting custody of children.

139. Support of wife and children on divorce or separation granted to wife.

140. Security for maintenance and alimony.

141. Court shall resort to what, in executing certain sections.

142. If wife has sufficient support, court may withhold allowance.

143. Community and separate property may be subjected to support and educate children.

144. Legitimacy of issue.

145. Same.

146. Disposition of community property on divorce.

147. How disposed of when divorce rendered on adultery.

148. Such an action subject to revision on appeal.

§ 136. Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance of the wife and her children, or any of them, by the husband.

§ 137. While an action for divorce is pending the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. When the husband wilfully deserts the wife, she may, without applying for a divorce, maintain in the Superior Court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and executions may issue therefor in the discretion of the court. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court. [In effect April 5, 1880.]

55 Cal. 326.

§ 138. In an action for divorce the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

§ 139. Where a divorce is granted for an offence of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

52 Cal. 384.

§ 140. The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

§ 141. In executing the five preceding sections the court must resort:

- i. To the community property then,
2. To the separate property of the husband.

§ 142. When the wife has either a separate estate, or there is community property sufficient to give her alimony

or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband.

§ 143. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

§ 144. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

§ 145. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case.

§ 146. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property and the homestead shall be assigned as follows:

1. If the decree be rendered on the ground of adultery or extreme cruelty, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties may deem just.

2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties.

3. If a homestead has been selected from the community property, it may be assigned to the innocent party, either absolutely, or for a limited period, subject, in the latter case, to the future disposition of the court, or it may, in the discretion of the court, be divided, or be sold and the proceeds divided.

4. If a homestead has been selected from the separate property of either, it shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party. [In effect July 1, 1874.]

47 Cal. 146.

§ 147. The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead, as in this chapter provided, and whenever necessary for that purpose, may order a partition or

sale of the property and a division or other disposition of the proceeds. [In effect July 1, 1874.]

47 Cal. 147.

§ 148. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court. [In effect July 1, 1874.]

CHAPTER III.

HUSBAND AND WIFE

- Section** 155. Mutual obligations of husband and wife.
- 156. Rights of husband, as head of family.
 - 157. In other respects their interests separate.
 - 158. Husband and wife may make contracts.
 - 159. How far may impair their legal obligations.
 - 160. Consideration for agreement of separation.
 - 161. May be joint tenants, &c.
 - 162. Separate property of the wife.
 - 163. Separate property of the husband.
 - 164. Community property.
 - 165. Inventory of separate property of wife.
 - 166. Filing inventory notice of wife's title.
 - 167. Wife not competent to contract for payment of money.
 - 168. Earnings of wife not liable for debts of husband.
 - 169. Earnings of wife, when living separate, separate property.
 - 170. Liability for debts of wife contracted before marriage.
 - 171. Wife's property not liable for debts of the husband, but liable for her own debts.
 - 172. Power of the husband over community property.
 - 173. Courtesy and dower not allowed.
 - 174. Support of wife.
 - 175. Husband not liable when abandoned by wife.
 - 176. When wife must support husband.
 - 177. Rights of husband and wife governed by what.
 - 178. Marriage settlement contracts, how executed.
 - 179. To be acknowledged and recorded.
 - 180. Effect of recording.
 - 181. Minors may make marriage settlements.

§ 155. Husband and wife contract towards each other obligations of mutual respect, fidelity, and support.

§ 156. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

§ 157. Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

§ 158. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the Title on Trusts.

52 Cal. 335; 53 Cal. 459; 54 Cal. 178; 55 Cal. 15, 52, 53.

§ 159. A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation. [In effect July 1, 1874.]

§ 160. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 161. A husband and wife may hold property as joint tenants, tenants in common, or as community property.

53 Cal. 459.

§ 162. All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

53 Cal. 459; 55 Cal. 56.

§ 163. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

57 Cal. 257, 320.

§ 164. All other property acquired after marriage, by either husband or wife, or both, is community property.

57 Cal. 320.

§ 165. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the recorder of the county in which the parties reside.

§ 166. The filing of the inventory in the recorder's office is notice and *prima facie* evidence of the title of the wife. [In effect July 1, 1874.]

§ 167. The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a pledge or mortgage thereof executed by the husband. [In effect July 1, 1874.]

54 Cal. 178.

§ 168. The earnings of the wife are not liable for the debts of the husband.

58 Cal. 459.

§ 169. The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

58 Cal. 459.

§ 170. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

§ 171. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

§ 172. The husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate estate.

58 Cal. 118.

§ 173. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

§ 174. If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband. [In effect July 1, 1874.]

§ 175. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement. [In effect July 1, 1874.]

54 Cal. 397.

§ 176. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no

separate property, and there is no community property, and he is unable, from infirmity, to support himself. [In effect July 1, 1874.]

§ 177. The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

§ 178. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

§ 179. When such contract is acknowledged or proved, it must be recorded in the office of the recorder of every county in which any real estate may be situated which is granted or affected by such contract.

Recorder must record. Pol. Code, § 4225

§ 180. The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

§ 181. A minor capable of contracting marriage may make a valid marriage settlement.

Married women may become sole traders, &c. Code Civ. Proc. § 1811-1821.

TITLE II.

PARENT AND CHILD.

CHAPTER I. BY BIRTH, §§ 193-215.

II. BY ADOPTION, §§ 221-230.

CHAPTER I.

CHILDREN BY BIRTH.

SECTION 193. Legitimacy of children born in wedlock.

194. Legitimacy of children born out of wedlock

195. Who may dispute the legitimacy of a child

196. Obligation of parents for the support and education of their children.

197. Custody of legitimate child

- Section 198.** Husband and wife living separate, neither to have superior right to custody of children.
- 199.** When husband or wife may bring action for the exclusive control of children. Decree in such cases.
- 200.** Custody of an illegitimate child.
- 201.** Allowance to parent.
- 202.** Parent cannot control the property of child.
- 203.** Remedy for parental abuse.
- 204.** When parental authority ceases.
- 205.** Remedy when a parent dies without providing for the support of his child.
- 206.** Reciprocal duties of parents and children in maintaining each other.
- 207.** When a parent is liable for necessaries supplied to a child.
- 208.** When a parent is not liable for support furnished his child.
- 209.** Husband not bound for the support of his wife's children by a former marriage.
- 210.** Compensation and support of adult child.
- 211.** Parent may relinquish services and custody of child.
- 212.** Wages of minors.
- 213.** Right of parent to determine the residence of child.
- 214.** Wife in certain cases may obtain custody of minor children.
- 215.** Child legitimized by marriage of parents

§ 193. All children born in wedlock are presumed to be legitimate.

§ 194. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. [in effect July 1, 1874.]

§ 195. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

§ 196. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

§ 197. The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement

If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto. [In effect July 1, 1874.]

§ 198. The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

§ 199. Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the court may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

§ 200. The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings.

§ 201. The proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

§ 202. The parent, as such, has no control over the property of the child.

§ 203. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

Omission to supply a child with necessaries is a misdemeanor, and desertion is punished by imprisonment. Penal Code, §§ 270, 271.

§ 204. The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;

2. Upon the marriage of the child ; or
3. Upon its attaining majority.

§ 205. If a parent chargeable with the support of a child dies, leaving it chargeable to the county, and leaving an estate sufficient for its support, the supervisors of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

§ 206. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding.

§ 207. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent.

§ 208. A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

§ 209. A husband is not bound to maintain his wife's children by a former husband ; but if he receives them into his family and supports them, it is presumed that he does so as a parent ; and, where such is the case, they are not liable to him for their support, nor he to them for their services.

§ 210. Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

§ 211. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

§ 212. The wages of a minor employed in service may be paid to him until the parent or guardian entitled thereto gives the employer notice that he claims such wages. [In effect July 1, 1874.]

§ 213. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

§ 214. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this State, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in section 246.

See Act of March 7, 1874, Relative to Orphans and Abandoned Children Appendix, pp.

§ 215. A child born before wedlock becomes legitimate by the subsequent marriage of its parents. [In effect July 1, 1874.]

Child stealing is punished by § 278 of the Penal Code, and abortion, or submitting to attempted abortion, by imprisonment of from one to five years, §§ 274, 275.

CHAPTER II.

ADOPTION.

- Sections** 221. Child may be adopted.
- 222. Who may adopt.
- 223. Consent of wife necessary.
- 224. Consent of child's parents.
- 225. Consent of child.
- 226. Proceedings on adoption.
- 227. Judge's order.
- 228. Effect of adoption.
- 229. Effect on former relations of child.
- 230. Adoption of illegitimate child.

§ 221. Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter.

§ 222. The person adopting a child must be at least ten years older than the person adopted. [In effect July 1, 1874.]

§ 223. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent. [In effect July 1, 1874.]

§ 224. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be a habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect.

§ 225. The consent of a child, if over the age of twelve years, is necessary to its adoption.

§ 226. The person adopting a child, and the child adopted, and the other persons, if within or residents of this State, whose consent is necessary, must appear before the judge of the Superior Court of the county where the person adopting resides, and the necessary consent must thereupon be signed and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of this State, then their written consent, duly proved or acknowledged, according to sections eleven hundred and eighty-two and eleven hundred and eighty-three of this Code, shall be filed in said Superior Court at the time of the application for adoption. [In effect April 5, 1880.]

§ 227. The judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

§ 228. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation. [In effect July 1, 1874.]

§ 229. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it.

§ 230. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

52 Cal. 86.

TITLE III.

GUARDIAN AND WARD.

- SECTION** 236. Guardian, what.
237. Ward, what.
238. Kinds of guardians.
239. General guardian, what.
240. Special guardian, what.
241. Appointment by parent.
242. No person guardian of estate without appointment.
243. Appointment by court.
244. Same.
245. Jurisdiction.
246. Rules for awarding custody of minor.
247. Powers of guardian appointed by court.
248. Duties of guardian of the person.
249. Duties of guardian of estate.
250. Relation confidential.
251. Guardian under direction of court.
252. Death of a joint guardian.
253. Removal of guardian.
254. Guardian appointed by parent, how superseded.

SECTION 255. Guardian appointed by court, how superseded

256. Released by ward.

257. Guardian's discharge.

258. Insane persons.

§ 236. A guardian is a person appointed to take care of the person or property of another.

§ 237. The person over whom or over whose property a guardian is appointed, is called his ward.

§ 238. Guardians are either :

1. General ; or,
2. Special.

§ 239. A general guardian is a guardian of the person or of all the property of the ward within this State, or of both.

§ 240. Every other is a special guardian.

§ 241. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing :

1. If the child be legitimate, by the father, with the written consent of the mother ; or by either parent, if the other be dead or incapable of consent ;

2. If the child be illegitimate, by the mother. [In effect July 1, 1874.]

§ 242. No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

§ 243. A guardian of the person or property, or both, of a person residing in this State, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in section two hundred and forty-one, by the Superior Court, as provided in the Code of Civil Procedure. [In effect April 5, 1880.]

§ 244. A guardian of the property within this State of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the Superior Court. [In effect April 5, 1880.]

§ 245. In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

§ 246. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare, and if the child be of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

1. To a parent;

2. To one who was indicated by the wishes of a deceased parent;

3. To one who already stands in the position of a trustee of a fund to be applied to the child's support;

4. To a relative. [In effect July 1, 1874.]

See § 214.

§ 247. A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

§ 248. A guardian of the person is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place within the State, but not elsewhere, without permission of the court.

§ 249. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the Superior Court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward, at the close of

his guardianship, in as good condition as he received it. [In effect April 5, 1880.]

§ 250. The relation of guardian and ward is confidential, and is subject to the provisions of the Title on Trust.

§ 251. In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

§ 252. On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

§ 253. A guardian may be removed by the Superior Court for any of the following causes :

1. For abuse of his trust ;
 2. For continued failure to perform its duties ;
 3. For incapacity to perform its duties ;
 4. For gross immorality ;
 5. For having an interest adverse to the faithful performance of his duties ;
 6. For removal from the State ;
 7. In the case of a guardian of the property, for insolvency ;
- or,
8. When it is no longer proper that the ward should be under guardianship. [In effect April 5, 1880.]

§ 254. The power of a guardian appointed by a parent is superseded :

1. By his removal, as provided by section 253 ;
2. By the solemnized marriage of the ward ; or,
3. By the ward's attaining majority.

§ 255. The power of a guardian appointed by a court is suspended only :

1. By order of the court ; or,
2. If the appointment was made solely because of the ward's minority, by his attaining majority ; or,
3. The guardianship over the person of the ward, by the marriage of the ward. [In effect July 1, 1874.]

§ 256. After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence

§ 257. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

§ 258. A person of unsound mind may be placed in an asylum for such persons, upon the order of the Superior Court of the county in which he resides, as follows :

1. The court must be satisfied, upon examination in open court and in the presence of such person, from the testimony of two reputable physicians, that such person is of unsound mind, and unfit to be at large ;

2. After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, or any citizen, may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy.

As to appointment, rights, and powers of guardian see Code Civ Proc. §§ 1747-1809.

TITLE IV.

MASTER AND SERVANT.

SECTION 264. Minors may apprentice themselves.

265. Consent of parents, &c., requisite.

266. Written consent.

267. Executors may bind.

268. Supervisors may bind out.

269. Town officers.

270. Age of apprentice to be inserted in indentures

271. Indentures, conditions in.

272. Same.

273. Deposit of indentures.

274. Alien minors.

275. Contract under preceding section to be acknowledged.

276. Causes for annulling indentures.

§ 264. Every minor, with the consent of the persons or of officers hereinafter mentioned, may, of his own free will, bind himself, in writing, to serve as clerk, apprentice, or servant, in any profession, trade, or employment, during his minority and such binding shall be as valid and effectual as if such minor was of full age at the time of making the engagement

Aiding apprentice to run away a misdemeanor. Penal Code, § 646
See Act of April 3 1876, Relative to Apprentices, Appendix, pp.

§ 265. Such consent shall be given :

1. By the father of the minor. If he be dead, or be not of legal capacity to give his consent, or if he shall have abandoned or neglected to provide for his family, and such fact be certified by a justice of the peace of the township or county, or sworn to by a credible witness, and such certificate or affidavit be indorsed on the indenture, then :

2. By the mother. If the mother be dead, or be not of legal capacity to give such consent or refusal, then :

3. By the guardian of such infant. If such infant have no parent living, or none in a legal capacity to give consent, and there be no guardian, then :

4. By the supervisors of the county, or any two justices of the peace, or the judge of the Superior Court of the county ;

5. If such minor be an orphan, under the care and control of any orphan asylum in this State, then by the board of managers thereof. [In effect April 5, 1880.]

§ 266. Such consent shall be signified in writing by the person entitled to give the same, by certificate at the end of, or indorsed upon the indentures.

§ 267. The executors of any last will of a parent who shall be directed in such will to bring up his or her child to some trade or calling, may bind such child to service as a clerk, or apprentice, in like manner as the father might have done if living. If there is a surviving mother, her consent also is necessary.

§ 268. The supervisors of the county may bind out minors who are or shall become chargeable to such county, to be clerks, apprentices, or servants, which binding shall be as effectual as if such minors had bound themselves with the consent of their father.

§ 269. In every town or city the presiding officer of the first council or legislative board thereof, if there be more than one, or any public officer or officers appointed to provide for the poor, may in like manner bind out any child who, or whose parents are, chargeable to any such town or city.

§ 270. The age of every infant so bound shall be inserted in the indentures, and shall be taken to be the true age ; and whenever public officers are authorized to execute any indentures, or their consent is required to the validity of the same.

it shall be their duty to inform themselves fully of the infant's age.

§ 271. Every sum of money paid or agreed for, with or in relation to the binding out of any clerk, apprentice, or servant shall be inserted in the indentures.

§ 272. The indenture shall also contain an agreement, on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture.

§ 273. The counterpart of any indenture executed by any county, or city, or town officers, must be by them deposited in the office of the county clerk. [In effect April 5, 1880.]

§ 274. Any minor, capable of becoming a citizen of this State, coming from any other country, State, or Territory, may bind himself to service until his majority, or for any shorter term. Such contract, if made for the purpose of raising money to pay his passage, or for the payment of such passage, may be for the term of one year, although such term may extend beyond the time when such person will be of full age, but it shall in no case be for a longer term.

§ 275. No contract made under the preceding section shall bind the servant, unless duly acknowledged by the minor, before some public magistrate or other officer authorized to administer oaths, nor unless a certificate, showing that the same was made freely, on private examination, be indorsed upon the contract.

§ 276. Such indentures of apprenticeship may be annulled for:

1. Fraud in the contract of indenture;
2. When such contract is not made or executed in accordance with the provisions of this title;
3. For wilful non-fulfilment, by such master, of the provisions of such indenture;
4. Cruelty or maltreatment of such apprentice by the master. In such case, the apprentice may recover for his services.

PART IV.

CORPORATIONS.

TITLE I. GENERAL PROVISIONS AS TO ALL CORPORATIONS.
§§ 283-403.

- II. INSURANCE CORPORATIONS, §§ 414-448.**
- III. RAILROAD CORPORATIONS, §§ 454-491.**
- IV. STREET RAILROAD CORPORATIONS, §§ 497-511.**
- V. WAGON ROAD CORPORATIONS, §§ 512-523.**
- VI. BRIDGE, FERRY, WHARF, CHUTE, AND PIER CORPORATIONS, §§ 528-531.**
- VII. TELEGRAPH CORPORATIONS, §§ 536-541.**
- VIII. WATER AND CANAL CORPORATIONS, §§ 548-551.**
- IX. HOMESTEAD CORPORATIONS, §§ 557-566.**
- X. SAVINGS AND LOAN CORPORATIONS, §§ 571-579.**
- XI. MINING CORPORATIONS, §§ 584-587.**
- XII. RELIGIOUS, SOCIAL, AND BENEVOLENT CORPORATIONS, §§ 593-601.**
- XIII. CEMETERY CORPORATIONS, §§ 608-614.**
- XIV. AGRICULTURAL FAIR CORPORATIONS, §§ 620-622.**
- XV. GAS CORPORATIONS, §§ 628-632.**
- XVI. LAND AND BUILDING CORPORATIONS, §§ 639-648.**

TITLE I.

GENERAL PROVISIONS APPLICABLE TO ALL CORPORATIONS.

CHAPTER I. FORMATION OF CORPORATIONS, §§ 283-320.

- II. CORPORATE STOCK, §§ 322-349.**
- III. CORPORATE POWERS, §§ 354-393.**
- IV. EXTENSION AND DISSOLUTION OF CORPORATIONS
§§ 399-403.**

CHAPTER I

FORMATION OF CORPORATIONS.

ARTICLE I. CORPORATIONS DEFINED AND HOW ORGANIZED, §§ 283-300.
II. BY-LAWS, DIRECTORS, ELECTIONS, AND MEETINGS, §§ 301-320

ARTICLE I.

CORPORATIONS DEFINED AND HOW ORGANIZED.

- SECTION 283.** Corporation defined.
284. What are public and private corporations.
285. Corporations, how formed.
286. For what purpose private corporations are formed.
287. How corporations may continue their existence under this Code.
288. Existing corporations not affected.
289. Name of instrument creating corporation.
290. Articles of incorporation, what to contain.
291. Certain corporations to state further facts in articles.
292. Five corporators, three to be citizens of the State, to sign articles and acknowledge the same.
293. Prerequisite to filing articles. Amounts to be subscribed to be fixed.
294. Prerequisite to filing articles of corporations for profit.
295. Oath of officer to subscription of stock and payment of tax per cent.
296. To file articles with county clerk and secretary of state, and receive certificate. Term of existence.
297. Certified copy of certificate to be *prima facie* evidence.
298. Who are members and who stockholders of a corporation
299. When member dies successor to be elected.
300. Banking corporations may elect to have capital stock.

§ 283. A CORPORATION is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

51 Cal. 410.

§ 284. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State; all other corporations are private. [In effect July 1, 1874.]

51 Cal. 409.

§ 285. Private corporations may be formed by the voluntary association of any five or more persons in the manner

prescribed in this article. A majority of such persons must be residents of this State. [In effect July 1, 1874.]

§ 286. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. [In effect July 1, 1874.]

§ 287. Any corporation existing on the first day of January, one thousand eight hundred and seventy-three, formed under the laws of this State, and still existing, which has not already elected to continue its existence, under the provisions of this Code applicable thereto, may, at any time hereafter, make such election by the unanimous vote of all its directors, or such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of corporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this Code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby. [In effect July 1, 1874.]

57 Cal. 533.

§ 288. No corporation formed or existing before twelve o'clock, noon, of the day upon which this Code takes effect, is affected by the provisions of Part IV. of Division First of this Code, unless such corporation elects to continue its existence under it as provided in section 287; but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed, subject to the provisions of this section.

52 Cal. 141.

§ 289. The instrument by which a private corporation is formed is called "Articles of Incorporation."

§ 290. Articles of incorporation must be prepared, setting forth: First, the name of the incorporation. Second, the purpose for which it is framed. Third, the place where its principal business is to be transacted. Fourth, the term for which it is to exist, not exceeding fifty years. Fifth, the number of its directors or trustees, which shall not be less than five nor more than eleven, and the names and residence of those who are appointed for the first year; *provided*, that the corporate powers, business, and property of corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, may be conducted, exercised, and controlled by a board of not less than five nor more than fifty directors, to be chosen from among the stockholders of such corporation, or from among the members of such order or organization; *and provided also*, that at any time during the existence of corporations for profit, other than those of the character last herein above provided for, the number of the directors may be increased or diminished by a majority of the stockholders of the corporation, to any number not exceeding eleven nor less than five, who must be members of the corporation, whereupon a certificate, stating the number of directors, must be filed, as provided for in section two hundred and ninety-six, for the filing of the original articles of incorporation. Sixth, the amount of its capital stock, and the number of shares into which it is divided. Seventh, if there is a capital stock the amount actually subscribed, and by whom. [In effect April 16, 1880.]

63 Cal. 128; 66 Cal. 345.

§ 291. The articles of incorporation of any railroad, wagon road, or telegraph organization must also state:

1. The kind of road or telegraph intended to be constructed.
2. The place from and to which it is intended to be run, and all the intermediate branches;
3. The estimated length of the road or telegraph line;
4. That at least ten per cent. of the capital stock subscribed has been paid in to the treasurer of the intended corporation.

§ 292. The articles of incorporation must be subscribed by five or more persons, a majority of whom must be residents of this State, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property. [In effect July 1, 1874.]

§ 293. Each intended corporation named in section 291, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amounts, to wit:

1. One thousand dollars per mile of railroads;
2. One hundred dollars per mile of telegraph lines;
3. Three hundred dollars per mile of wagon roads.

53 Cal. 128.

§ 294. Before the articles of incorporation of any corporation referred to in the preceding section are filed, there must be paid for the benefit of the corporation, to a treasurer elected by the subscribers, ten per cent. of the amount subscribed.

57 Cal. 396.

§ 295. Before the secretary of state issues to any such corporation a certificate of the filing of articles of incorporation, there must be filed in his office an affidavit of the president, secretary, or treasurer named in the articles, that the required amount of the capital stock thereof has been actually subscribed, and ten per cent. thereof actually paid to a treasurer for the benefit of the corporation.

Signing fictitious name or fraud in the subscription is made a misdemeanor by Penal Code, § 557.

§ 296. Upon filing the articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of state, and the affidavit mentioned in the last section, where such affidavit is required, the secretary of state must issue to the corporation, over the great seal of the State, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate, by the name stated in the certificate, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or in this Code otherwise specially provided. [In effect July 1, 1874.]

§ 297. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, must be received in all the courts and other places as *prima facie* evidence of the facts therein stated. [In effect July 1, 1874.]

§ 298. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the incorporators and their successors are called members.

§ 299. No corporation hereafter formed shall purchase, locate, or hold property in any county in this State, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this Code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this State in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquire any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks and certified copies thereof shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation shall be filed at the places directed by the general law and this section; *provided*, that all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; and *provided further*, that the said damages may be recovered in an action brought in any court of this State of competent jurisdiction, by any party or parties suffering the same. [In effect, April 23, 1880.]

§ 300. Every corporation that has been or may be created under the general laws of this State, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor in the same manner as corporations formed under the provisions of Chapter I., Article I., of the Civil Code, relating to the formation of corporations: *provided*, that no such corporation shall use or convert any moneys or funds theretofore belonging to it or under its control into capital stock, but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting and its object must be given by the president of such corporation by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of the meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the offices of the secretary of state and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock. *And provided, further*, that no bank in this State shall ever pay any dividend, upon so-called guaranty notes, nor upon any stock except upon the amount actually paid in money into said capital upon such stock, and any payment made in violation of this provision shall render all officers and directors consenting to the same jointly and severally liable to the depositors to the extent thereof. [In effect May 28, 1878.]



